

**CONFIDENTIAL SETTLEMENT AGREEMENT AND SITE RELEASE**

This Confidential Settlement Agreement and Site Release ("Agreement") is made by and between the Port of Seattle ("The Port" as that term is defined more fully below), Lamorak Insurance Company, formerly known as OneBeacon America Insurance Company, for itself and as successor to both Commercial Union Insurance Company and Employers Surplus Lines Insurance Company ("Lamorak"), and Bedivere Insurance Company, formerly known as OneBeacon Insurance Company, for itself and as the successor in interest to certain rights and obligations under policies issued by American Employers' Insurance Companies (Lamorak and Bedivere Insurance Company are hereinafter collectively referred to as "Bedivere" as that term is defined more fully below). Collectively, The Port and Bedivere shall be referred to as the "Parties."

**RECITALS**

**WHEREAS**, The Parties agree that the Port was a named insured or insured under certain insurance policies allegedly issued by Bedivere to The Port (the "Alleged Policies" as that term is defined more fully below); and

**WHEREAS**, The Port has tendered claims to Bedivere related to the Sites (as that term is more fully defined below), and disputes have arisen between and among The Port and Bedivere as to the terms, conditions, interpretation, and application of the Alleged Policies, and/or to what extent the Alleged Policies provide coverage for the environmental claims at the Sites; and

**WHEREAS**, The Port has incurred and may in the future incur certain liabilities, losses and expenses arising out of the claims relating to environmental contamination at the Sites; and

**WHEREAS**, The Port and Bedivere have differing interpretations as to their respective

obligations, if any, under the Alleged Policies; and

**WHEREAS**, the Parties now desire to compromise, settle and adjust fully and finally all disputes which now or hereafter may exist between them with respect to any and all claims, known and unknown, past, present or future, which have arisen or may arise under any and all coverages of the Alleged Policies relating to and/or arising out of the Sites;

**NOW, THEREFORE**, in consideration of the foregoing and the mutual promises and covenants contained herein, the sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

**1. DEFINITIONS**

For purposes of this Agreement, the following defined terms shall have the meanings set forth below:

**1.1** "The Port" means the Port of Seattle and any Persons identified as an insured, named insured, person insured or additional insured under the Policies and any such Persons claiming, or which has claimed or which may in the future claim any right, title, interest or benefit in or under the Policies.

**1.2** "Bedivere" means Lamorak Insurance Company, formerly known as OneBeacon America Insurance Company, in its own right and as successor to both Commercial Union Insurance Company and Employers Surplus Lines Insurance Company ("Lamorak"), and Bedivere Insurance Company, formerly known as OneBeacon Insurance Company, in its own right and as the successor in interest to certain rights and obligations under policies issued by American Employers' Insurance Companies, and each of their agents, representatives, predecessors, successors, parents, subsidiaries, affiliates, divisions, employees, assigns, claims administrators, board members, directors, and officers.

**1.3** "Person" or "Persons" shall mean any individual, corporation, partnership, unincorporated association, organization, Governmental Agency, sole proprietorship, trust or any other entity (or estate, guardian or beneficiary thereof) recognized in law or in fact to have rights or obligations.

**1.4** "Governmental Agency" means (i) the government of the United States of America, and any state, commonwealth, territory or possession of the United States of America, including the District of Columbia and Puerto Rico, and the government of any county, province, city or municipality thereof; (ii) any subdivision, instrumentality, department or agency of any of the foregoing; (iii) the government of any foreign country, state or territory and any province, county, city or municipality thereof; and (iv) any subdivision, instrumentality, department or agency of any such foreign country, state, territory or any province, county, city or municipality thereof.

**1.5** "The Alleged Policies" shall mean the primary, umbrella or excess, policies issued or alleged to have been issued by Bedivere to The Port as identified on Schedule "A" attached hereto.

**1.6** "The Sites" shall mean the contaminated sites as identified and defined by the United States Environmental Protection Agency ("EPA") and the Washington State Department of Ecology ("Ecology") commonly known as the Lower Duwamish Waterway Superfund Site, the East Waterway Operable Unit of the Harbor Island Superfund Site,, Terminal 117 Early Action Area, Terminal 115 North, Terminal 115 South,, Terminal 108, and South Park Marina, and Terminal 91 and including adjacent properties to the extent that contamination from those areas has co-mingled with contamination of the listed contaminated sites.

**1.7** "Environmental Claims" means any and all past, present or future claims, counterclaims, cross-complaints, rights, demands, requests, allegations, suits, lawsuits,

administrative proceedings, causes, causes of action, liens, debts, bills, accounts, duties, dues, reckonings, sums, sums of money, bonds, specialties, rights of indemnity, rights of subrogation, demands for injunctive relief, controversies, contributions, exonerations, covenants, agreements, contracts, promises, acts, omissions, trespasses, variances, damages, judgments, compensations, set-offs, reimbursements, restitution, costs, expenses, losses, exposures, executions, attorneys' fees, obligations, orders, and liabilities, whatsoever, known or unknown, whether in law, equity, admiralty or otherwise, that any Person may now have, or hereinafter may have against The Port arising from alleged, potential, threatened or actual pollution by, contamination with, or exposure to smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants, or pollutants, or any form of toxic, hazardous or injurious substances or materials, including without limitation, any "hazardous waste" as that term is defined in 42 U.S.C. §9601 at, from or arising out of the Sites.

**1.9** "Natural Resource Damages Claims" or "NRD Claims" means any and all claims, known or unknown, alleging damages, restitution, or compensation for injury to, destruction of, loss of use of, loss of, or restoration to, natural resources under the trusteeship of the Washington Department of Ecology, the Environmental Protection Agency, and/or any other federal or state governmental agency caused by the release or threatened release of hazardous substances at or arising out of the Sites, including the reasonable costs of assessing such injury, destruction, or loss resulting from such releases, as set forth in or recoverable under Section 107(a) and 111(b) of CERCLA, 42 U.S.C. §9607(a) and §9611(b), the Spill Act, the Washington Model Toxics Control Act, RCW Chapter 70.105d, and/or any other federal, state and local statute, rule, regulation, ordinance, law or common law as the same may be amended or superseded.

1.10 "Effective Date Of This Agreement" shall mean the latest date of any Party's signature to this Agreement.

As used in this Agreement, the singular and masculine gender shall mean also the plural and feminine or neuter, as may be appropriate; "it" shall include "he" and "she"; and "each" and "all" includes "each" and "every."

## 2. **SETTLEMENT PAYMENT**

2.1 Bedivere shall pay to The Port the total sum of eight hundred twenty thousand dollars (\$820,000.00) (the "Settlement Sum"), within thirty (30) days of the Effective Date Of This Agreement.

2.2 Payment of the Settlement Sum shall be made by check or draft made payable to "Port of Seattle." Bedivere shall not reduce or offset the Settlement Sum by any amount, including but not limited to, any deductible, co-insurance, self-insurance or retrospective premium or rating adjustment.

2.3 The Settlement Sum shall be delivered to:

c/o K. Michael Fandel  
Miller Nash Graham & Dunn  
Pier 70  
2801 Alaskan Way, Suite 300  
Seattle, WA 98121

## 3. **RELEASES**

3.1 **Release By The Port for Alleged Policies.** In consideration for payment of the Settlement Sum, The Port hereby fully and irrevocably releases, acquits and forever discharges Bedivere from any and all Environmental Claims and NRD Claims relating to the Sites under the Alleged Policies, whether such claims are known or unknown, and does hereby covenant and agree to forever relinquish and abandon any and all rights, whether actual or

alleged, known or unknown, accrued or unaccrued, currently existing or which may arise under any circumstances whatsoever in the future, under the Policies for coverage of Environmental Claims and NRD Claims relating to the Sites, including without limitation, claims for bad faith, extra-contractual damages, violation of an alleged duty of good faith and fair dealing or comparable statutory claims seeking compensatory damages, punitive damages, exemplary damages, statutory multiple damages, interest, costs, or any other type of relief relating in any way to coverage for Environmental Claims and NRD Claims relating to the Sites. This Release by The Port shall not bar or otherwise affect contribution rights that may or may not exist between Bedivere and Great American Insurance Company and Great American Insurance Company of New York, formerly known as American National Fire Insurance Company (collectively “the Great American Companies”) and U.S. Fire Insurance Company *inter se* for any costs incurred prior to the Effective Date when the Alleged Policies were agreed to be exhausted.

**3.2 Release by The Port for All Other Policies** – In consideration for payment of the Settlement Sum, The Port hereby fully and irrevocably releases, acquits and forever discharges Bedivere from any and all Environmental Claims and NRD Claims, including all claims for bad faith, extra-contractual damages, violation of an alleged duty of good faith and fair dealing or comparable statutory claims seeking compensatory damages, punitive damages, exemplary damages, statutory multiple damages, interest, costs, relating to the Sites under all insurance policies other than the Alleged Policies issued by Bedivere and under which The Port is or alleges to be a Named Insured, Insured, or Additional Insured, whether those policies are primary or excess, known or unknown, and whether such claims are known or unknown, *provided, however,* The Port’s release under all policies other than the Alleged Policies applies only to fees, costs and losses for Environmental Claims or NRD Claims relating to the Sites

which are incurred prior to the date that The Port provides written notice to Bedivere of an Environmental Claim or NRD Claim relating to the Sites under a policy other than an Alleged Policy, the existence of which The Port discovers after the Effective Date of This Agreement. The Port reserves its post-notice rights, if any, under such potentially applicable policies other than the Alleged Policies. The Parties represent that following reasonable searches they are not currently aware of any policies other than the Alleged Policies issued by Bedivere to the Port.

**3.3 Release by Bedivere.** Bedivere hereby fully and irrevocably releases, acquits and forever discharges The Port from any and all Environmental Claims and NRD Claims relating to the Sites under the Alleged Policies, whether such claims are known or unknown, and does hereby covenant and agree to forever relinquish and abandon any and all rights, whether actual or alleged, known or unknown, accrued or unaccrued, currently existing or which may arise under any circumstances whatsoever in the future, under the Alleged Policies for coverage of Environmental Claims and NRD Claims relating to the Site. No portion of this Paragraph 3.2 of this Agreement shall affect in any way Bedivere's rights (if any) with respect to reinsurance.

#### **4. EXHAUSTION OF ALLEGED POLICIES**

The Parties agree that by payment of the Settlement Sum all policy limits of the Alleged Policies, whether per accident, per occurrence, or aggregate, applicable to all Environmental Claims and NRD Claims relating to the Sites have been exhausted. The Alleged Policies are deemed exhausted without regard to the number of accidents or occurrences giving rise to the Environmental Claims and NRD Claims relating to the Sites.

#### **5. WAIVER OF COMMON LAW AND STATUTORY RIGHTS**

The Port acknowledges there is a risk that subsequent to the execution of this Settlement Agreement, it will incur, suffer, or discover losses, damages or injuries relating to the Sites which are

unknown and unanticipated at the time this Settlement Agreement is signed. This Settlement Agreement shall act as a release of The Port's future claims, statutory or otherwise, relating to the Sites that may arise from or under the Alleged Policies, whether such claims are currently known, unknown, foreseen or unforeseen. The Board understands and acknowledges the significance and consequence of this specific waiver, and hereby assumes full responsibility for any injuries, damages, losses or liability relating to the Sites that may presently exist or hereafter occur. The Parties agree that this waiver was separately bargained for.

**6. NO ADMISSIONS**

The Parties acknowledge that this Settlement Agreement is a compromise of disputed claims, and that neither this Settlement Agreement, nor any compliance herewith or consideration pursuant hereto, shall be construed as an admission by any of the Parties of any liability whatsoever.

**7. NO ASSIGNMENT**

Each of the Parties represents and warrants that it has not assigned, transferred or conveyed, or purported to have assigned, transferred, or conveyed to any person or entity any claim, demand, debt, liability, account, obligation, or cause of action herein released.

**8. AUTHORITY TO SIGN.**

Each of the individuals executing this Settlement Agreement represents and warrants that he/she has full power and authority to enter into this Settlement Agreement on behalf of the Party he/she represents, and each Party represents that it is authorized to perform any and all transactions or other matters contemplated to be performed under this Settlement Agreement. To the extent that any Party is subsequently determined to have violated this provision of the Settlement Agreement, such Party shall indemnify and hold harmless any other Party which is damaged by such violation, including, but not limited to, for all attorney's fees, expert fees and costs incurred.



**9. INTERPRETATION AND DRAFTING**

The Parties acknowledge that in executing this Settlement Agreement, neither shall be construed to be solely responsible for the drafting of this Settlement Agreement and, therefore, any ambiguity shall not be construed against any of the Parties as the alleged draftsman. The Parties agree that all parts of this Settlement Agreement shall be construed as a whole according to their fair meaning and shall not be presumed to be construed for or against any party.

**10. COUNTERPART EXECUTION**

This Settlement Agreement may be executed in counterparts, each of which, when so executed, shall together constitute and be one and the same instrument. Electronically scanned or facsimile signatures are acceptable, which scan or facsimile shall be deemed to be an original.

**11. COSTS AND FEES**

Each of the Parties will bear its own attorneys' fees and costs related to the entry into this Settlement Agreement.

**12. CHOICE OF LAW**

This Settlement Agreement shall be construed according to the substantive law of the state of Washington.

**13. CONTINUING OBLIGATION**

This Settlement Agreement shall be binding upon and inure to the benefit of all Parties, their heirs, successors, insurers, and assigns with the exception of contribution rights that may or may not exist between Bedivere and the Great American Companies and U.S. Fire Insurance Company *inter se*. It shall also be binding on any and all third parties and/or third-party beneficiaries under the Policies.

**14. ENFORCEMENT OF AGREEMENT**

This Settlement Agreement shall be admissible as to the terms and substance of this Settlement Agreement in any proceeding for enforcement hereof. The prevailing Party in any such dispute shall

recover its attorneys' fees and costs in connection with any such proceeding.

**15. FINAL INTEGRATED AGREEMENT**

This Settlement Agreement is the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral agreements and discussions, and all prior written agreements. This Settlement Agreement may not be amended orally or in any way other than in writing that is signed by the Parties hereto. Each of the Parties represents and warrants that it has neither made nor relied upon any statements, representations or promises other than those expressly contained in this Settlement Agreement.

**16. CONFIDENTIALITY**

**The Parties agree not to disclose or publicly comment upon the terms, provisions, or information contained within this Settlement Agreement. The Parties further agree that all communications relating to the negotiation of this Settlement Agreement shall be confidential. Notwithstanding the foregoing provisions, the Parties may: (1) disclose any terms to legal counsel, financial advisors, parent entities and/or agents or representatives (including, but not limited to, indemnitors, auditors, reinsurers, reinsurance intermediaries, and underwriters); (2) disclose any terms as are necessary to fulfill any obligations under this Settlement Agreement; (3) disclose any terms as are necessary to comply with the requirements of any law, contractual requirement and/or legal process, including those necessary for a party to assert any answer, affirmative defense, or counterclaim to any action, proceeding, or claims (including any claim or action challenging the exhaustion of the Alleged Policies); and (4) disclose any terms as necessary to comply with any public disclosure obligations.**

**17. MODIFICATION**

No subsequent modifications or amendments to the Settlement Agreement shall be effective unless memorialized in a writing signed by the Parties.

Agreed and accepted:

**BEDIVERE (as defined above)**

**PORT OF SEATTLE**

By: [Signature]

By: \_\_\_\_\_

Its: Authorized Representative

Its: \_\_\_\_\_

Date: 3/19/17

Date: \_\_\_\_\_

**SCHEDULE A**

**Alleged Bedivere Insurance Policies**

<u>Carrier</u>	<u>Policy #</u>	<u>Effective</u>	<u>Limits</u>	<u>Attachment</u>
American Employers Insurance Company	CLA37204781	1/1/1961-1/1/62	100,000 (PD), 200,000 (BI)	0
American Employers Insurance Company	CLA37200380	1/1/1960-1/1/61	100,000 (PD), 200,000 (BI)	0